

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible to)	WC Docket No. 09-197
Receive Universal Service Support)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Q LINK WIRELESS LLC)	
)	
Petition for Designation as a)	
Lifeline Broadband Provider)	
)	
)	

**REPLY OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA
CORPORATION COMMISSION TO Q LINK WIRELESS, LLC’S OPPOSITION TO
THE REQUEST TO HOLD IN ABEYANCE THE APPLICATION OF Q LINK
WIRELESS LLC FOR FCC DESIGNATION AS A LIFELINE BROADBAND
PROVIDER ELIGIBLE TELECOMMUNICATIONS CARRIER**

I. SUMMARY

Q LINK WIRELESS, LLC (“Q LINK”) has requested that the Federal Communications Commission (“FCC” or “Commission”) grant it designation as an Eligible Telecommunications Carrier (“ETC”) under the FCC’s newly created Lifeline Broadband Provider (“LBP”) classification, established by the Lifeline Modernization Order¹ and “pursuant to Section

¹ See, *In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order , and Order on Reconsideration, FCC 16-38 (released April 27, 2016) (“Lifeline Modernization Order”)

214(e)(6) of the Communications Act of 1934, as amended, and Sections 54.201 and 54.202” of the rules of the FCC in order to expand its ability to offer “Lifeline-supported broadband services.” Q LINK requests that its LBP ETC designation be granted “nationwide, subject to the coverage of its underlying facilities-based carriers.” This necessarily includes the state of Oklahoma.

On October 14, 2016 the Public Utility Division of the Oklahoma Corporation Commission (“PUD”) filed a Request to Hold in Abeyance the Application of Q LINK for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier (“Request”).² PUD’s motivation for this Request was to afford the FCC adequate time “...to process Q LINK’s application with a full understanding of its authority to grant the relief requested by Q LINK and can take the time to consider Oklahoma’s and other states’ accomplishments in assisting Lifeline consumers and curtailing waste, fraud and abuse.”

Q LINK, on October 24, 2016, filed in opposition to PUD’s Request.³ Q LINK, in its opposition, portrays PUD’s Request as a request for stay which, Q LINK alleges, “would have to be summarily rejected...”. Also, Q LINK alleges that its existing ETC designation in Oklahoma⁴ somehow removes any interest PUD might have in the requested LBP ETC designation being considered here. Lastly, Q LINK alleges irreparable harm to itself if it must wait any longer for

² Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Q LINK WIRELESS, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket Nos. 09-197, 11-42.

³ Q LINK WIRELESS LLC’s Opposition to the Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Application of Q LINK WIRELESS, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket Nos. 09-197, 11-42.

⁴ See, Application of Q LINK WIRELESS LLC for Designation as an Eligible Telecommunications Carrier on a Wireless Basis (Low Income Only), Cause No. PUD 201200103, Final Order No. 60321 Granting Designation as a Wireless Eligible Telecommunications Carrier, issued October 16, 2012.

the FCC to act on its pending federal ETC designation petitions for the ten states which lack jurisdiction to designate ETCs.⁵

PUD's Request is not a request for stay. PUD makes clear that "The FCC's rules at 47 C.F.R. §54.202(d)(1) already provide the FCC with the ability to notify Q LINK that grant of their application will not be automatically effective. This ability and authority exists even if the FCC's review confirms that Q LINK meets the qualifications for the streamlined processing of its LBP ETC application." PUD's Request does not seek a stay or any other "extraordinary" relief. A proper reading of the Request unambiguously shows that PUD is asking the FCC to utilize the authority it holds under the existing rules in considering and analyzing Q LINK's petition.

Q LINK incorrectly asserts that the existence of its current ETC designation,⁶ granted by the Oklahoma Corporation Commission ("OCC"), precludes PUD from having any interest in the LBP ETC designation it now seeks in Oklahoma. Further, Q LINK fails to mention that this existing ETC designation is limited to the non-rural service areas in Oklahoma for which Q LINK is authorized to provide Lifeline service.⁷ Because Q LINK's petition seeks LBP ETC designation in the entire state of Oklahoma and involves service territories for which Q LINK has heretofore not been designated as an ETC by the OCC, PUD certainly has an interest as to such matters as which carriers are providing Lifeline services in Oklahoma and where and how those services will be made available. PUD also describes its concerns with how such carriers will provide their services and whether they will be provided in accordance with the OCC's pro-consumer rules. Given Q LINK's multiple references to the FCC's preemption of the states'

⁵ Oklahoma is not among these ten states.

⁶ *Supra* n.2.

⁷ *Supra* n.4. Q LINK's ETC designation was granted "for the purpose of receiving federal Low Income support for the provisioning of service to its Lifeline and Link Up subscribers in Oklahoma in all exchanges and service territories of AT&T Oklahoma and Windstream, non-rural incumbent local exchange carriers..."

ability to grant LBP ETC designations and the assertion that “the OCC has been expressly preempted from considering the Petition,” PUD does not believe its questions are “hypothetical” as to the level of interest (or lack thereof) that Q LINK will have in complying with OCC rules in the provision of its Lifeline services in what would be its new ETC designated service territory in Oklahoma.

Q LINK also portrays PUD’s Request to hold the petition in abeyance as a barrier to the FCC taking action on Q LINK’s outstanding request for ETC designation in ten states in which Q LINK has been awaiting federal ETC designation. While PUD believes the issues it raises are applicable to jurisdictions beyond just Oklahoma, PUD’s ultimate concern is specific to the LBP ETC designation in Oklahoma and, accordingly, would suggest that a bifurcated approach to the Q LINK Petition would allow for appropriate consideration of the Oklahoma specific concerns and facts. PUD would also observe that, with regard to the ten states with which Q LINK has concern, if the FCC has taken an extended period of time to review the existing ETC designation application, it is likely for good reason and is a prime example of why the existing rule at 47 C.F.R. § 54.202(d)(1) allows the FCC to notify the carrier that the grant of an LBP ETC designation will not be automatic. Contrary to Q LINK’s apparent belief, the streamlined treatment of such LBP ETC petitions, is not a “right.” This treatment is an accommodation available under certain circumstances that the FCC can utilize at its own discretion.

II. PUD’s Request is Not a Request for Stay

Q LINK’s Response nonsensically characterizes PUD’s Request as a stay, and attempts to support its position through a legal argument that is completely inapplicable to this particular Request. PUD did not request a stay of Q LINK’s petition. PUD, as clearly stated in its Request, asked the FCC to exercise its existing authority under 47 C.F.R. § 54.202(d)(1), and to

notify Q LINK that grant of its petition will not be automatically effective. Again, the FCC's authority in this regard is unambiguously clear and, once exercised, will afford the FCC adequate time to properly analyze and process Q LINK's petition. .

The consideration of Q LINK's Petition for LBP ETC designation, under the current structure, is to be done in accordance with 47 U.S.C. § 214(e)(6). Q LINK's request, as it relates to Oklahoma, is for designation exclusively in areas served by rural telephone companies. With regard to ETC designation in rural service areas, 47 U.S.C. § 214(e)(6) states:

Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as a eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest. (emphasis added)

The use of the word "may", as opposed to "shall", combined with the requirement to make a specific public interest finding when a rural telephone company service area is the subject of the requested ETC designation, makes clear that such applications are to undergo a higher level of scrutiny than a request for designation in a non-rural service area. This need for additional scrutiny alone justifies the FCC to exercise its authority to take a petition for LBP ETC designation off of the automatic processing track. In fact, PUD does not understand how the FCC can comply with the public interest requirement at 47 U.S.C. § 214(e)(6) if a petition for designation in a rural service area is allowed to be granted automatically without any further action or scrutiny by the FCC.⁸

The OCC has recent experience with an application requesting ETC designation in all rural service areas in Oklahoma. IM Telecom, LLC d/b/a Infiniti Mobile ("Infiniti"), which held

⁸ Simply relying on a petitioner's "self-certification" of public interest benefits is not an acceptable substitute for a review of actual facts and circumstances by the granting authority.

ETC designation in the non-rural service areas in Oklahoma, filed an application seeking “statewide” expansion of its ETC designation which involved all rural telephone company service areas in Oklahoma.⁹ PUD, in performing its review and analysis, followed its obligations under 47 U.S.C. § 214(e)(2), which also requires a public interest finding when rural telephone company service areas are involved, and, after reviewing information provided by Infiniti and finding operational and financial shortcomings, PUD recommended denial of the application. After conducting discovery and holding a hearing on the merits, the Administrative Law Judge supported PUD’s position and recommended that “the Commission adopt the position of PUD and the RLECs to deny the application, because Infiniti met some but not all of the requirements for extension of its ETC designation.”¹⁰ The OCC then issued Order No. 647172 on November 24, 2015 adopting the Administrative Law Judge’s recommendation and denying Infiniti’s application. Obviously, had there been a requirement for Infiniti’s application to automatically be granted in sixty-days, PUD would not have been able to collect and review the information necessary to make an informed recommendation, in compliance with its duty at 47 U.S.C. § 214(e)(2), and the public interest would not have been served.

These unique requirements for ETC designation in rural service areas further supplement PUD’s initial basis for holding Q LINK’s petition in abeyance in order to gain the benefit of having the decision of the D.C. Circuit Court’s ruling on NARUC’s Petition for Review,¹¹ and the FCC’s response to the Pennsylvania Public Utility Commission’s Petition for Clarification.¹²

⁹ See, Oklahoma Corporation Commission Cause No. PUD 201400305, filed October 24, 2014.

¹⁰ See, Oklahoma Corporation Commission Cause No. PUD 201400305, Report of the Administrative Law Judge, filed October 8, 2015.

¹¹ See, Nat’l Ass’n of Regulatory Util. Comm’ers v. F.C.C., *et al.*, Case No. 16-1170 (2016 D.C. Cir.) Petition for Review (filed June 3, 2016).

¹² See, Petition for Clarification of the Pennsylvania Public Utility Commission, WC Docket No. 11-42, WC Docket No. 09-197, and WC Docket No. 10-90, dated June 23, 2016.

Again, PUD is not requesting a stay. PUD is requesting the FCC to exercise its existing authority under the rule to remove Q LINK's petition from automatic approval. This will allow the FCC to afford itself the time necessary to properly consider Q LINK's petition under the statutory requirements, address the uncertain nature of important matters surrounding its own authority, and the role of the OCC in protecting Lifeline customers in Oklahoma along with minimizing waste, fraud and abuse in the Lifeline program.

III. PUD Request Specific to Oklahoma

While PUD believes many, if not all, of the concerns it raises with regard to the automatic approval of Q LINK's petition for LBP ETC designation have at least some applicability to other states, PUD speaks only for these matters as they apply to Oklahoma. As previously indicated, if Q LINK is concerned about having the FCC perform a reasonable review of its petition for designation in any other state, to include the ten states for which Q LINK has been awaiting federal ETC designation "for more than four years," PUD would have no issue with a bifurcated approach to Q LINK's petition for LBP ETC designation. This would allow for consideration of the Oklahoma component of the petition to be conducted independently of any other states.

IV. Public Interest

Q LINK asserts that the public interest will be harmed if it cannot have its application processed on a streamlined basis. While they offer no evidence of this harm, the general proposition seems to be that there are Oklahoma consumers going without Lifeline service absent the entry of Q LINK into the remaining areas of the state in which it does not currently hold ETC designation. PUD would disagree. There are Lifeline providers designated in every exchange in Oklahoma. In addition, there are twenty-three (23) wireless ETCs designated in

Oklahoma, and most of them have significant marketing operations. Furthermore, the Consumer Services group within PUD, while occasionally receiving calls from consumers seeking information regarding which providers are available in their area, is not aware of any large scale unmet demand for Lifeline service within Oklahoma.

Q LINK's assertion that the public interest is being harmed would be one of the issues considered in the analysis that would be undertaken by the FCC in accordance with 47 U.S.C. § 214(e)(6). Further, PUD believes that the public interest is best served when a LBP ETC designation is granted by the FCC with full knowledge of its authority to grant such a request, and a clear determination of Oklahoma's ability to monitor and enforce rules associated with the provision of Lifeline services is made. Such considerations will best serve the public interest and give appropriate consideration as to how to continue to protect against waste, fraud and abuse in the Lifeline program.

V. Conclusion

For the reasons stated above, the FCC should reject Q LINK's characterization of PUD's Request as a request for a stay. Instead, the FCC should exercise its existing authority to notify Q LINK that its petition will not be granted automatically. Once the FCC provides that notice, gains full knowledge of its authority, and provides Oklahoma with clarity as to its role in serving and protecting Oklahoma consumers along with its role in reducing waste, fraud, and abuse in the Lifeline program, the FCC should then take the amount of time necessary to process the petition in accordance with the statutory requirements.

Respectfully submitted,



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